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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,309	09/01/2006	Michael Francis O'Rourke	207,777	9254

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666 Third Avenue
New York, NY 10017-5621

EXAMINER

NATNITHADHA, NAVIN

ART UNIT	PAPER NUMBER
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3735

MAIL DATE	DELIVERY MODE
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07/25/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/591,309

Applicant(s)

O'ROURKE, MICHAEL FRANCIS

Examiner

Navin Natnithithadha

Art Unit

3735

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2007.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-6 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 01 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 09012006;10192006.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Oath/Declaration

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR 1.56.

Applicant's Declaration incorrectly states, "I acknowledge my duty to disclose information of which I am aware which is material to the patentability of this application under 37 CFR 1.56(a)" (emphasis added). An example of a correct statement is "I acknowledge the duty to disclose information which is material to patentability of this application in accordance with Title 37, Code of Federal Regulations Section 1.56."

Priority

2. Acknowledgment is made of applicant's claim for priority under 35 U.S.C. 119(a)-(d) based upon an application filed in Australia on 09 March 2004. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Objections

3. Claims 1-6 are objected to because of the following informalities:

The process steps that further limit the method are not properly defined, which makes the claim subject matter indefinite. Examiner suggests defining each limiting step with a verb first. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

4. Claims 4-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claim 4, it is unclear as to whether “considered as having vasoconstriction as a cause of hypotension” is part of the claimed invention because of the phrase “can be.”

As to claim 5, it is unclear as to whether “concluded as likely to have vasodilatation as the cause of hypertension” is part of the claimed invention because of the phrase “can be.”

As to claim 4, it is not clear as to the meaning of the limitation “wherein a hypotensive individual is confirmed to have the higher (second and above) greater than the first harmonic can be considered as having vasoconstriction as a cause of

hypotension” (emphasis added). It appears that words are missing between “higher (second and above)” and “greater than.”

As to claims 5 and 6, the method of claim 1 is directed to “measuring the arterial pressure waveform invasively or non-invasively from a peripheral artery, and claims 5 and 6 appears to be directed to determining/concluding if an individual is hypotensive. It is not clear how determining if an individual is hypotensive is a *further limitation* of a method for “measuring the arterial pressure waveform invasively or non-invasively from a peripheral artery.” However, it is possible that “measuring the arterial pressure waveform invasively or non-invasively from a peripheral artery” is a further limitation of a method for determining if an individual is hypotensive. Because the subject matter of claims 4-6 do not further limit the method of claim 1, the subject matter regarding a hypotensive individual in claims 4-6 will not be considered in this Office Action.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by O'Rourke, WO 1990/11043 (“O'Rourke”) (also published as US 5,265,011 A).

Claims 1-6: O'Rourke teaches a method for measuring the arterial pressure waveform invasively or non- invasively from a peripheral artery (“pressure pulses recorded

invasively or noninvasively," see p. 3, para. 2, and fig. 1), wherein the waveforms are accurately recorded and secondary pressure waveforms are identified ("calculating from the contours of the pressure pulses in the brachial, carotid and radial arteries the absolute systolic pressure, the degree of augmentation, and the contour of the pressure pulse wave in the ascending aorta," see Abstract); wherein a series of pressure waveforms are ensemble-averaged into a single waveform to provide consistency of waveform detail ("average pulse," see p. 4, para. 2); and wherein the waveforms are subjected to harmonic analysis and moduli of their harmonic components are compared (pulse signals are subject to Fourier transformation and the result is compared, see p. 16, para. 2, to p. 17, para. 3).

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Navin Natnithithadha whose telephone number is (571) 272-4732. The examiner can normally be reached on Monday-Friday, 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II, can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Navin Natnithithadha
Patent Examiner
Art Unit 3735
07/23/2007